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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,415	02/14/2005	Jeremy Nicholas Ness	056222-5070	4449
9629 7590 05/28/2008 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
SOROUSH, ALI				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,415

Applicant(s)

NESS ET AL.

Examiner

ALI SOROUGH

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 11-29 and 36-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-29 and 36-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgement of Receipt

Applicant's response filed on 12/19/2007 to the Office Action mailed on 09/19/2007 is acknowledged.

Status of the Claims

Claims 5-10 and 30-35 have been cancelled, claims 58 and 59 have been newly added, and claims 1, 2, 4, 11, 12, 17, 19-26, 28, 29, 36, 37, 42, and 44-57 are currently pending examination for patentability. Therefore, claims 1-4, 11-29, and 36-59 are currently pending examination for patentability.

Rejections and/or objections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue; and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. The rejection of claims 1-5, 11-20, 25, 27-30, 36-45, 50, 51, and 54-57 under 35 U.S.C. 103(a) as being unpatentable over Ness (International Application Published Under the PCT WO 02/074430 A1, Published 09/26/2002, Filed 03/13/2002) in view of Natske et al. (International Application Published Under the PCT WO 96/03041, Published 02/08/1996) **is maintained.**

Applicant Claims

Applicant claims an aminoplast capsule having an inner coating and/or outer coating encapsulating a perfume.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Ness teaches a perfume being encapsulated by an aminoplast capsule formed from a mixture of melamine-formaldehyde and ethylene/maleic anhydride. (See page 2, paragraphs 3-5). The capsule is formed by the method of polymerization using an acid catalyzed condensation reaction. (See page 3, paragraph 1). The perfumes encapsulated are to be incorporated into shampoo compositions and other aqueous surfactant-containing products. (See page 2, paragraph 1). The capsules have a typical

diameter of 10 to 50 microns and a wall thickness of 0.1 to 50 microns. (See page 5, paragraph 4). A preferred perfume composition taught by Ness comprises: 5.3% citral diethyl acetal, 32.0% linalool, 30.2% linalyl acetate, 3.0% litsea cubeba oil, and 26.5% orange oil brazil all of which have an octanol-water coefficient between 3 and 5. (See page 6 paragraph 7). The perfume encapsulate is added to a hair shampoo composition 0.2% by weight. (See page 7, paragraph 8).

***Ascertainment of the Difference Between Scope the Prior Art and the Claims
(MPEP §2141.012)***

The composition of Ness is an aminoplast capsule with a perfume composition in a surfactant containing hair shampoo. Ness however lacks a teaching of the capsule having an inner and/or outer coating. Natske et al. cures this deficiency.

Natske et al. is discussed above.

***Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)***

It would have been obvious to one of ordinary skill in the art to combine the teachings of Ness with Natske et al. One would have been motivated to do so because Natske et al. teaches that an inner coating of wax in an aminoplast capsule provides for greater long-term stability. Therefore one would expect that the addition of an inner wax coating to the aminoplast capsule of Ness would also be expected to provide greater stability of the encapsulated perfume in a shampoo composition. For the foregoing

reasons the instant composition would have been obvious to one of ordinary skill in the art at the time of the instant invention.

Response to Applicant's Arguments

Applicant argues that there is no motivation to combine the teachings of Ness with Natske et al. in order to arrive at a shell capsule with an inner surface coating encapsulating a perfume. Applicant argues that capsule used to retain herbicides would not lead one of ordinary skill in the art to modify capsules used to retain perfume in a similar way. Applicant's arguments have been fully considered and found not to be persuasive. The teaching of Natske et al. is directed to enhancing the long term stability of microcapsules by applying an inner microcapsule wall made of a wax. Such an inner wall hinders the penetration of water into the capsule. (See page 2, Lines 10-25). The examiner has relied on the teachings of Natske et al. in order to modify a microcapsule, particularly an aminoplast, to increase the stability of the capsule. Since the modification with the wax is done to the capsule it would be obvious to one of ordinary skill in the art to also modify an similar capsule for any other use. For the foregoing reasons the rejection of claims 1-5, 11-20, 25, 27-30, 36-45, 50, 51, and 54-57 under 35 U.S.C. 103(a) is maintained.

New Grounds of Rejection

2. Claims 1-4, 11-29, and 36-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness et al. (US Patent 6194375 B1, Published 02/27/2001) in view of Natske et al. (International Application Published Under the PCT WO 96/03041, Published 02/08/1996).

Applicant Claims

Applicant claims an aminoplast capsule having an inner coating and outer coating encapsulating a perfume.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Ness et al. teaches the formation of capsules of perfume is by polymerization reaction at the interface between the droplets and the aqueous phase and further having polyvinyl alcohol at the surface of the capsule. (See column 6, Lines 40-55). The perfume includes solvents and is in a weight ratio of 1:30 or 1:20 to 1:2 or 1:1 relative to the shell polymer. (See column 9, Lines 24-28 and 48-51). In a preferred embodiment the perfume composition taught by Ness et al. comprises 5.3% Cithrathal concentrate, 32.0 % Linalol, 30.2% Linalyl acetate, 26.5% orange oil all of which have an octanol-water coefficient between 3 and 5. (See column 24, Lines 40-45). These encapsulated perfumes were mixed in to make perfumed shampoos including 1% of the encapsulate. (See column 24, Lines 63-66).

Ascertainment of the Difference Between Scope the Prior Art and the Claims (MPEP §2141.012)

The composition of Ness et al. is an aminoplast capsule having an outer coating with a perfume composition in a surfactant containing hair shampoo. Ness et al. however lacks a teaching of the capsule having an inner coating. Natske et al. cures this deficiency.

Natske et al. is discussed above.

***Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)***

It would have been obvious to one of ordinary skill in the art to combine the teachings of Ness with Natske et al. One would have been motivated to do so because Natske et al. teaches that an inner coating of wax in an aminoplast capsule provides for greater long-term stability. Therefore one would expect that the addition of an inner wax coating to the aminoplast capsule of Ness would also be expected to provide greater stability of the encapsulated perfume in a shampoo composition. For the foregoing reasons the instant composition would have been obvious to one of ordinary skill in the art at the time of the instant invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Soroush whose telephone number is (571) 272-9925. The examiner can normally be reached on Monday through Thursday 8:30am to 5:00pm E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ali Soroush
Patent Examiner
Art Unit: 1616

/Mina Haghighatian/
Primary Examiner
Art Unit 1616